IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-11-2006

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.17761 of 2006
And
M.P.Nos.1 and 2 of 2006

Mr.K.J.Doraisamy .. Petitioner

Vs.

1.The Assistant General Manager,
State Bank of India,
Erode Branch,
Erode - 638 001.

2.The Chief Manager (PBD),
State Bank of India,
Erode Branch (0837),
Erode - 638 001. .. Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Mandamus, directing the respondents to forbear from publishing the photographs of the debtors in any newspaper or magazine whatsoever as threatened in the warning notice dated 22.5.2006 issued by the first respondent.

For Petitioner : Mr.Amalaraj
S.Penikilapatti.

For Respondents : Mr.K.Sankaran

ORDER

The question as to whether a Bank/Financial Institution, has the right to publish the photograph of the defaulting borrower in Newspapers, and if such publication offends Article 21 of the Constitution, falls for consideration in this writ petition.

2. The petitioner borrowed a term loan of Rs.6 lakhs from the State Bank of India on 15.5.2001. On the petitioner committing default in payment of the monthly instalments, the Bank issued a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, on 6.2.2006. Subsequently, the Bank also issued a notice dated 22.5.2006, threatening to recover the loan by enforcing the security and bringing it to sale by publishing the details of the properties as well as the photographs of the borrower and the surety in Tamil and English Newspapers.

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3. Contending that the publication of his photograph and the photograph of the surety would be violative of Article 21 of the Constitution, the petitioner has filed the above writ petition, seeking a Writ of Mandamus, directing the respondents to forbear from publishing the photographs in any Newspapers or Magazines. The Writ petition was admitted on 15.6.2006 and an interim direction was issued to the respondents not to publish the photographs in any Newspapers or Magazines. The Bank had come up with a petition to vacate the said interim direction and by consent of parties, the writ petition itself was taken for final disposal.

4. I have heard Mr.Amalaraj S.Penikilapatti, learned counsel appearing for the petitioner and Mr.K.Sankaran, learned counsel appearing for the respondents.

5. In the background of an increasing trend among borrowers to avail loans and commit default and later bargain with the Banks and Financial Institutions for the waiver of a portion of the interest and a portion of the principal if possible, the Banks and Financial Institutions were compelled to device innovative methods to secure their interest and also to recover their dues. Some statistics furnished in the Statement of Objects and Reasons to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, were mind boggling as seen from the following extract:-

> "Whereas on 30th September, 1990 more than 15 lakhs of cases filed by the Public Sector Banks and about 304 cases filed by the Financial Institutions were pending in various Courts, recovery of debts involved more than Rs.5,622/- crores in dues of Public Sector Banks and about Rs.391/- crores of dues of the Financial Institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country."

6. Even after the enactment of Act No.51 of 1993 and the amendment to the same by Amending Act 1 of 2000, it was felt that the system could not keep pace with change in time. Therefore, with a view to regulate the securitisation and reconstruction of financial assets and enforcement of security interest, the Parliament enacted the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the Statement of Objects and Reasons to the said Act, the Law Makers took note of the fact that the Banking and Financial Sector in our country do not have a level playing field as compared to other participants in the Financial Markets in the World and that our existing legal frame work relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. Therefore, obviously with a view to keep pace with the changing commercial practices and financial sector reforms, the Banks appear

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to be adopting new techniques, one of which is the issue on hand viz., a threat to publish photograph of the defaulters in Newspapers.

7. The right of the Bank to adopt any lawful method for the recovery of its dues, including the publication of the photograph of the defaulter has come directly into conflict with the right to privacy and dignity of the borrower, which has now come to be recognised, to some extent, as part of the right to life guaranteed under Article 21 of the Constitution. It is this tension between the right of the Bank and the right to privacy, that is sought to be resolved in this writ petition.

8. The Universal Declaration of Human Rights, 1948 asserted in its preamble that "recognition of the human dignity and of the equal and in alienable rights of all members of the human family is the foundation of freedom, justice and peace in the World". Article 17 of the International Covenant on Civil and Political Rights, 1966, ratified by India reads as follows:-

> "(1) No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his honour and reputation.
>
> (2) Everyone has the right to the protection of the law against such interference or attacks."

9. Though International Human Rights norms or International Conventions cannot be effectuated by Courts, the principles contained therein have been imported into the Fundamental Rights guaranteed under the Constitution, whenever they fell for interpretation. Drawing inspiration from Article-11 of International Covenant on Civil and Political Rights, 1966, the Supreme Court held in Jolly George Varghese vs. The Bank of Cochin (AIR 1980 SC 470) that "*the march of civilisation has been a story of progressive subordination of property rights to personal freedom*". Though in the earliest decision in M.P.Sharma vs. Satish Chandra (AIR 1954 SC 300), the Supreme Court held that there is no justification to import the right to privacy into our Constitution by a process of strained construction, analogous to American Fourth Amendment, it was for the first time in the year 1963 that the right to privacy was recognised as part of the right to life under Article 21 of the Constitution, in the minority view expressed by Justice Subba Rao in Kharak Singh vs. State of U.P. (AIR 1963 SC 1295). Though the majority view was otherwise, Justice Subba Rao held that *the concept of liberty in Article-21 was comprehensive enough to include privacy and that a person's house, where he lives with his family is his "castle" and that nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy*. The following extract from the minority view expressed by Justice Subba Rao and subsequently upheld in the said judgment, laid the foundation for the development of the Law relating to the right to privacy:-

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"The Scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channelling one's actions through anticipated and expected grooves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life."

10. The right to privacy came into focus in a much more pronounced way in Govind vs. State of M.P. And Others (1975 (2) SCC 148). Recognising that the right to privacy is not explicit in our Constitution, the Supreme Court held in paragraph-23 of the said judgment as follows:-

"23. Individual autonomy, perhaps the central concern of any system of limited Government, is protected in part under our Constitution by explicit Constitutional guarantees. "In the application of the Constitution our contemplation cannot only be of what has been but what may be". Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. *Yet, too broad a definition of privacy raises serious question about the propriety of judicial reliance on a right that is not explicit in the Constitution.* Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values".

11. After holding that the right to privacy must encompass and protect the personal intimacies of the home, family, marriage, mother hood, procreation and child rearing, *the Supreme Court went on to hold in the same judgment that a claimed right must be a Fundamental Right implicit in the concept of ordered liberty.* In paragraphs 25 and 27, the Supreme Court expounded the theory further, on the following lines:

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"25. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those

things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against Government", a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the Fundamental Rights of Citizens can be described as contributing to the right to privacy."

"27. There are two possible theories for protecting privacy of home. The first is that activities in the home harms others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such 'harm' is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the World the image they want to be accepted themselves, an image that may reflect the values of their peers rather than the realities of their natures."

12. Highlighting the importance of the right guaranteed under Article 21, Justice V.R.Krishna Iyer, in his separate but concurring judgment in Maneka Gandhi vs. Union of India ((1978) 1 SCC 248)) held as follows:-

"Life is a terrestrial opportunity for unfolding personality, rising of higher states, moving to fresh woods and reaching out to reality which makes our earthly journey a true fulfillment - not a tale told by an idiot full of sound and fury signifying nothing, but a fine frenzy rolling between heaven and earth. The spirit of man is at the root of Article 21. Absent liberty, other freedoms are frozen."

13. The right to life was held to be inclusive of the right to live with human dignity, in Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi (AIR 1981 SC 746). In paragraph-6 of the said judgment, the Supreme Court held that "the right to life enshrined in Article-21 cannot be restricted to mere animal existence and that it means something much more than just physical survival." In paragraph-7, the Supreme Court went on to hold as follows:-

"7. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human

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dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."

14. R.Rajagopal vs. State of Tamil Nadu (1994 (6) SCC 632) is a turning point in the history of the development of the law of privacy in India. The question concerning the freedom of the press vis-a-vis the right to privacy was examined by the Supreme Court at length in the said case. Dealing with the origin of the said right, the Supreme Court held in paragraph-9 as follows:-

"9. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin -- (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising -- or non-advertising -- purposes or for that matter, his life story is written -- whether laudatory or otherwise -- and published without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status. We shall proceed to explain how? *Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21*."

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15. After an elaborate discussion of the American, Australian and English Case Law, the Supreme Court summarised the principles flowing from the discussion, in paragraph-26 as follows:-

> "26. We may now summarise the broad principles flowing from the above discussion:
>
> (1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent -- whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. *Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.*
>
> (2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that *once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others*. We are, however, of the opinion that in the interests of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.
>
> (3) There is yet another exception to the rule in (1) above -- indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication

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was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he was written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of Court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

16. In People's Union for Civil Liberties vs. Union of India ((1997) 1 SCC 301), relating to the tapping of telephones, the Supreme Court categorically affirmed in paragraph-17 of its judgment that the right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article-21 of the Constitution and that the said right cannot be curtailed "except according to procedure established by law". At the same time, the Apex Court also added a note of caution in paragraph-18 as follows:-

"18. The right to privacy – by itself – has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case."

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17. Mr.'X' vs. Hospital 'Z' ((1998) 8 SCC 296)) arose out of a claim for damages made by a person against the hospital which disclosed the fact that the patient tested positive for HIV (+) infection, resulting in his proposed marriage being called off and the patient being ostracised by the Community. Dealing with the contention that the right to privacy was invaded, the Supreme Court held in paragraphs 27 and 28 as follows:-

> "27. Right of privacy may, apart from contract, also arise out of a particular specific relationship which may be commercial, matrimonial, or even political. As already discussed above, doctor-patient relationship, though basically commercial, is, professionally, a matter of confidence and, therefore, doctors are morally and ethically bound to maintain confidentiality. In such a situation, *the public disclosure of even true private facts may amount to an invasion of the right of privacy which may sometimes lead to the clash of one person's "right to be let alone" with another person's "right to be informed*".
>
> "28. Disclosure of even true private facts has the tendency to disturb a person's tranquillity. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the right of privacy is an essential component of the right to life envisaged by Article-21."

Though certain observations made in the said judgment, were later held to be uncalled for by a Three Member Bench of the Supreme Court in Mr."X" vs. Hospital "Z" ((2003) 1 SCC 500)), the law laid down on the right to privacy was not upset.

18. Thus, by judicial pronouncements, the right to privacy and dignity were held to be part of the Fundamental Right to life and personal liberty guaranteed under Article 21 of the Constitution right from the decision of the Supreme Court in Kharak Singh's case. However, all the decisions referred to above did not put a stamp on such right as an absolute or in violable right.

19. In Govind vs. State of M.P. (1975 (2) SCC 148), the Supreme Court held as follows:-

> *"There can be no doubt that privacy - dignity claims deserve to be examined with care and to be denied only when an important counter vailing interest is shown to be superior."*

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In paragraph-28 of the same judgment, the Supreme Court held as follows:-

> "28. The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a Fundamental Right, *we do not think that the right is absolute*.

20. Even in R. Rajagopal vs. State of Tamil Nadu (1994 (6) SCC 632), cited supra, the Supreme Court held that the right to privacy has to go through a case-by-case development and that the concepts dealt with herein are still in the process of evolution. In paragraph-28 of the said judgment, the Supreme Court made it clear that the impact of Article-19 (1) (a) read with Clause (2) thereof on Sections 499 and 500 of the Indian Penal Code are not gone into by the Court and that they may have to await a proper case.

21. In Mr."X" vs. Hospital 'Z' (1998 (8) SCC 296) cited supra, the Supreme Court again made it clear that the right to privacy is not an absolute right, in the following words:-

> "The right however is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or more or less or protection of rights and freedom of others."

22. In People's Union for Civil Liberties vs. Union of India (2003 (4) SCC 399) arising out of a challenge to the Constitutional validity of the Representation of People (Amendment) Ordinance 2002, dealing with the requirement to furnish information by a candidate contesting an Election, the Supreme Court held that "*by declaration of a fact, which is a matter of public record, that a candidate was involved in various criminal cases, there is no question of infringement of any right of privacy*". Even with regard to the declaration of assets by candidates, the Supreme Court held that a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar Fiscal Legislation. The Supreme Court in the said case placed primacy on "the right to information" first adverted to in State of U.P. vs. Raj Narayan (1975 (4) SCC 428) and followed in S.P.Gupta vs. Union of India (1981 (Supp) SCC 87) and amplified in Union of India vs. Association for Democratic Reforms ((2002) 5 SCC 294)).

23. Dealing with the right to privacy and personal liberty, in the context of proceedings for divorce in which one of the parties

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to the litigation was alleged to be of unsound mind and was required to undergo a medical examination, the Supreme Court held in Sharda vs. Dharmpal ((2003) 4 SCC 493) as follows:-

> *"The right to privacy in terms of Article 21 of the Constitution is not an absolute right."*
>
> *"If there were a conflict between the Fundamental Rights of two parties that right which advances public morality would prevail."*

24. Again in People's Union for Civil Liberties vs. Union of India (2004 (9) SCC 580), arising under The Prevention of Terrorism Act, 2002, requiring any member of the public to disclose information to the Police, the Supreme Court held that the right to privacy is not an absolute right and it is subservient to that of security of State.

25. Once it is seen that the right to privacy is not an absolute or inviolable right, then the next question that falls for consideration is as to whether the Bank, with whom the customer has a fiduciary relationship, is entitled to disclose or publicise the information in their possession, resulting in a *breach of the duty of secrecy and confidentiality* . Dealing with the duty of the Bank to maintain secrecy qua its customer, it was held in Shankarlal Agarwalla –vs- State Bank of India (AIR 1987 Calcutta 29), as follows:-

> "10. The Banker is under an obligation to secrecy. According to Lord Halsbury's Laws of England 4th Edn. Vol.3 p.72 Article 97.
>
> "It is an implied term of the contract between a banker and his customer that the banker will not divulge to third person without the express or implied consent of the customer either the state of the customer's account or any of his transactions with the bank or any informations relating to the customer acquired through the keeping of his account unless the banker is compelled to do so by order of a Court or the circumstances give rise to a public duty of disclosure or protection of the banker's own interest requires it."
>
> "11. In the case reported in (1924) 1 KB 461 at 472 Tournier vs. National Provincial and Union Bank of England it was held that under four heads the bank could disclose such informations

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namely - (a) where the disclosure was under compulsion by law, (b) where there was a duty to the public to disclosure, (c) where the interest of the bank require disclosure and (d) where the disclosure was made by express or implied consent of the customer. It was held:-

> "An instance of the first class is the duty to obey an order under the Banker's Books Evidence Act. Many instances of the second class might by given. They may be summed up in the language of Lord Finlay in Weld-Blundell vs. Stephens where he speaks of cases where a higher duty than the private duty is involved, as where "danger to the State or public duty may supersede the duty of the agent to his principal". A simple instance of the third class is where a bank issues a writ claiming payment of an overdraft stating on the face of the writ the amount of the overdraft. The familiar instance of the last class is where the customer authorises a reference to his banker."

26. Thus even the English law recognized that the *"duty of the Bank to disclose information to the public"* or the *"interest of the Bank requiring disclosure"* supercedes *the duty of secrecy* .

27. The extent of liability of a Bank to maintain secrecy towards its customers, fell for consideration in Kattabomman Transport Corporation Ltd.,-vs- State Bank of Travancore (AIR 1992 Kerala 351), which arose out of the dismissal of an employee of a public sector undertaking, set aside by the High court. The High court directed reinstatement with back wages subject to the condition that the employee was not gainfully employed anywhere. The employer came to know that the employee was actually employed in a foreign country and was making remittances to the Bank. Therefore the employer requested the Bank to provide details of the remittances made by the employee but the same was resisted by the Bank on the ground that they were under an obligation to maintain secrecy and fidelity. Analysing the law on the duty of secrecy and fidelity for the Bank, the Division Bench of the Kerala High Court held in paragraphs 14, 15 and 17 as follows:-

> "14. In J. Milnes Holden's "The Law and Practice of Banking", Volume 1 (at page 67), adverting to duty to the public to disclose the author refers to the abovesaid cases. The author refers to the observations of Bankes, L.J. in Tournier's case, (1924) 1 KB 461, wherein Atkin, L.J., considered that the right to disclose exists

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"to the extent to which it is reasonably necessary .... for protecting the bank, or persons interested, or the public, against fraud or crime". The author also refers to the report of the Committee on Privacy (the 'Younger Committee') (Cmnd 5012 (1972))."

"15. In Tannan's "Banking Law and Practice in India", 18th Edition, 1989 (at page 175) the banker's obligation to secrecy is considered and reference is made to the decision in Tournier case, (1924) 1 KB 461. The author states that there are limitations in the rule to the extent mentioned in Tournier's case."

"17. From the aforesaid principles, it is clear that the banking practices and usages customary among bankers in India are same as in England. There can be gathered from Paget's Law of Banking, J. Milnes Holden's "The Law and Practice of Banking" and Tannan's "Banking Law and Practice in India". The principles laid down therein have therefore been accepted in India too."

28. In District Registrar -vs- Canara Bank ((2005) 1 SCC 496)) the Supreme Court was concerned with a State Amendment brought forth by the State of Andhra Pradesh, to section 73 of the Indian Stamp Act, by which, a person authorised by the Collector was empowered to search and seize any registers, books, records, papers, documents or other proceedings in the custody of a Bank for the purpose of discovering any fraud or omission in relation to the stamp duty payable on a document. The Banks themselves challenged the vires of the said amendment on the ground that it offended both the right to privacy of their customers, as well as the duty of the Banks to maintain secrecy and confidentiality. Tracing the origin of the right to privacy, the Supreme court held in paragraph 18 of its judgment as follows:-

"18. The right to privacy and the power of the State to "search and seize" have been the subject of debate in almost every democratic country where fundamental freedoms are guaranteed. History takes us back to Semayne's case decided in 1603 where it was laid down that "Every man's house is his castle." One of the most forceful expressions of the above maximum was that of William Pitt in the British Parliament in 1763. He said: "*The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter, the rain may enter - but the King of England cannot enter - all his force dare not cross the threshold of the ruined tenement*."

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Listing out the circumstances under which such right could be curtailed, the Supreme court held in para 34 as follows:-

> "34. Intrusion into privacy may be by – (1) legislative provisions, (2) administrative/executive orders, and (3) judicial orders. The legislative intrusions must be tested on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the Court can go into the proportionality of the intrusion vis-a-vis the purpose sought to be achieved. (2) So far as administrative or executive action is concerned, it has again to be reasonable having regard to the facts and circumstances of the case. (3) As to judicial warrants, the Court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for the protection of the particular State interest. In addition, as stated earlier, common-law-recognised rare exceptions such as where warrantless searches could be conducted but these must be in good faith, intended to preserve evidence or intended to prevent sudden danger to person or property."

29. The above discussion makes it clear that from the point of view of the individual, his right to privacy is not absolute and from the point of view of the Bank, the duty to maintain secrecy is superceded by a larger public interest as well as by the Bank's own interest under certain circumstances.

30. Coming to the authority of law, by which the Bank may be allowed to publish the photograph of the defaulter, it is seen that section 13 (4) of the SARFAESI Act authorizes the Bank to take possession of the secured asset and sell it. The procedure for such sale is prescribed under Rule 8 of the Security Interest (Enforcement) Rules, 2002. Sub-rule (1) of Rule 8 reads as under:-

> "8. Sale of immovable secured assets.--(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property."

Appendix IV to the said Rules which contains the Form in which the Possession Notice is to be issued by the Bank, steers clear any doubt that one may have. Para 2 and 3 of the Format of Notice under Appendix IV reads as follows:-

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"The borrower having failed to repay the amount, *notice is hereby given to the borrower and the public in general* that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him/her under Section 13(4) of the said Ordinance read with rule 9 of the said Rules on this ..... day ..... of the year.....

The borrower in particular and the public in general is hereby cautioned not to deal with the property and any dealings with the property will be subject to the charge of the .....(name of the Institution) for an amount Rs..... and interest thereon."

Thus the Statutory rules themselves provide for a notice not merely to the defaulting borrower, but also to the public in general. Therefore the threat held out by the Bank to publish the photograph of the borrower and the surety, is also authorized by the statutory rules.

31. Lastly, with the advent of the Right to Information Act, 2005, the Bank has become obliged to disclose information to the public. Section 3 of the said Act entitles all citizens to a right to information. Section 4 (2) of the said Act provides as follows:-

"(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."

Public Authority is defined under section 2 (h) of the Act to include "any body owned, controlled or substantially financed". Therefore, the respondent Bank is a Public Authority within the meaning of the Act and they owe a duty to disseminate information even suo moto.

Certain exemptions are listed out under section 8 of the Right to Information Act, 2005, two of which are of significance and they read as follows:-

"8.Exemption from disclosure of information:-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen

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(a) … … … … … ..
(b) … … … … … ..
(c) … … … … … ..
(d) … …… … … … ..
(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
(f) … … … … ..
(g) … … … … ..
(h) … … … … ..
(i) … … … … ..
(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or State Public Information Officer or the appellate authority as the case may be, is satisfied that the larger public interest justifies the disclosure of such information"

Thus the aforesaid provision leaves no room for any doubt that the *'Right to Privacy' fades out in front of the 'Right to Information' and 'larger public interest'.*

32. If borrowers could find newer and newer methods to avoid repayment of the loans, the Banks are also entitled to invent novel methods to recover their dues. Moreover, the petitioner is not entitled to seek the relief of a writ of mandamus for the following reasons also:-

(a) It is a fundamental principle of the Law of Writs that a Writ of Mandamus can be issued only to compel the performance of a statutory or public duty. But the prayer made in the present writ petition is to prevent the Bank from the performance of its public duty.

(b) What is challenged in the present writ petition, is a notice under section 13 of the SARFAESI Act. The petitioner has a statutory remedy of appeal under section 17 of the Act, without exhausting which, he is not entitled to invoke the writ jurisdiction of this court.

Hence I find no violation of any right or legal provision in the threat held out by the respondent Bank to publish the photographs of

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the borrower and the surety for the non repayment of the loan. Consequently the writ petition fails and is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Svn.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant General Manager,
State Bank of India,
Erode Branch,
Erode - 638 001.

2.The Chief Manager (PBD),
State Bank of India,
Erode Branch (0837),
Erode - 638 001.

1 cc to Mr.Amalaraj, Advocate, SR.56759
1 cc to Mr.K.Sankaran, Advocate, SR.55549.

bv (co)

dv/29.11.06

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